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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,471	09/08/2003	Jonathan R. Brock	B70.12-0001	2674
27367	7590	02/15/2006	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 - INTERNATIONAL CENTRE 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			MCCARRY JR, ROBERT J	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/657,471	Applicant(s) BROEK, JONATHAN R.	
	Examiner Robert J. McCarry, Jr.	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 7, 8 and 12-18 is/are rejected.
- 7) ☒ Claim(s) 9, 19, 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 7, 8 and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (US 4,895,380) in view of Johnson (US 5,711,227).

Brooks et al discloses a creeper comprised of a frame and a body for supporting a person. The frame and body components are able to be moved from a lower position to a raised position, as shown in figures 1 and 2. The body can also be raised from a supine position where the user is laying down to a raised position shown in figure 3 where the user would be sitting up, and these positions are held in place by a locking device connected to the frame. The creeper is supported on four wheels, one at each corner of the device, and enables the creeper to move from one position to another as dictated, and propelled, by the user.

Brooks et al discloses the creeper as described above. However, Brooks et al does not disclose the vehicle moving along a track with flanged wheels. Johnson discloses a trolley, which moves along a track comprised of two parallel rails. The vehicle is further comprised of a plurality of wheels having first and second flanges on either side of the wheel. The flanges contact the sides of the rail while the radial portion of the wheel contacts the top of the rail. It would have been obvious to one of ordinary

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skill in the art to have used the wheels and rails, like those of Johnson, as a teaching to be applied to a creeper, like that of Brooks et al in order to provide the creeper with a stable support surface and provide ease of movement for the user.

Allowable Subject Matter

Claims 9, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6, 10 and 11 are allowed.

Response to Arguments

Applicant's arguments filed 11/30/2005 have been fully considered but they are not persuasive. Applicant argues that the claims are not obvious since the prior art references are of non-analogous art. Applicant goes on to argue that the Johnson reference is not analogous to the Brooks reference since the Johnson reference is for a camera tripod and has no connection to a mechanics creeper. The two prior art references are in fact analogous in that they are wheeled vehicles. The use of a mechanics creeper and a camera tripod are interpreted as intended use. The Examiner has not relied on any features related specifically to the tripod or the camera in the reading of the reference. The Examiner has relied only on the track guided wheels for supporting a moving vehicle. As stated in the Office Action of September 6, 2005 Brooks discloses a creeper but does not disclose the vehicle moving along a track with flanged wheels. Johnson discloses a trolley, which moves along a track and having flanged wheels to mate with the track. Applicant also argues that there is no motivation

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to combine the prior art of Brooks and Johnson since they are non-analogous. As presented above as being analogous references in the realm of wheeled vehicles the motivation to combine is to give one vehicle better stability by moving along rails. As stated in the Office Action of September 6, 2005 the Examiner has used the features of the flanged wheels and rails, like those shown in Johnson, as a teaching that flanged wheels can be used on a creeper like that of Brooks, in place of the present wheels and the vehicle can be moved along rails in order to provide the creeper with a stable support surface and provide ease of movement for the user.

Applicant argues that the two references of Brooks and Johnson teach away from each other in that one of ordinary skill in the realm of mechanics creepers would not think to look at camera dollies for motivation. However, one of ordinary skill in the art of wheeled vehicle would not rule out either creepers or camera dollies in that those are intended uses for the structures and components of one vehicle could show a teaching to modify another vehicle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert J. McCarry, Jr.
Examiner
Art Unit 3617

RJM
February 8, 2006


S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600